*From Harlan's Birth Control Dissent, P. 2*

**The Supreme Court Is More Tender With Criminals Than With Security Risks, Pps. 2-3**

# I. F. Stone's Weekly

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# Words to Be Engraved on A New Rosetta Stone

The Berlin crisis brings forcibly to attention that the capitalist and communist systems have one charming characteristic in common. Neither asks its people whether they want to risk the suicide of the human race in a quarrel over access to one city; or indeed whether they want to go to war at all. Over there, where the workers and peasants have been freed from the heavy yoke of monopoly capitalism, a worried Russian can't even write a letter to *Pravda,* or go to a peace meeting. Over here, where such channels of protest are still open to a few, these are too few to count. Congress is locked in fierce contention over such momentous issues as whether aid to education shall include parochial schools, but it hardly looks up to notice that war clouds are gathering which could mean the end of our species. The Russians and the Americans resemble two huge herds moving toward possible conflict, too closely packed to struggle successfully against their fate. The helplessness of human kind is the dominant feature of the planetary landscape as the crisis approaches.

## The Nation-State Jungle

The next feature which the broad view turns up is that the problems of American-Russian relations are not really soluble in the existing frame of reference. By this I mean the system which divides the planet into sovereign nation states knowing no law but their own will and no protection but their own strength. Man may be on the verge of visiting the stars but he still lives in a jungle. Armies, spies, and the constant need for keeping people mobilized with fear and hatred, are the pillars of the nation state system. Can Russia trust us and our allies not to spy out her secrets, or we trust them not to spy out ours? Can X trust Y not to cheat if he can get away with it, since Y regards X as the embodiment of all evil and against such evil the end justifies the means—and X regards Y in exactly the same way? How can we stop testing and devising new monsters of destruction lest *he* steal a march on us and come up with some new whooper-dooper? Given such a world, how can the rest of mankind expect to make effective protest if Americans and Russians again pollute the skies, the seas and the earth with radioactivity, or chew up huge quantities of basic metals on vast military and spatial toys while millions of fellow creatures are lucky to have a wooden plow?

Woven into the crisis are other human ways that help to make it difficult to resolve. The leader of the herd must consider not only the welfare of the herd but his own prestige; this lost, the leadership may pass to someone else; indeed he may be trampled down by those behind him. Neither leader is a madman and neither leader wants war, but both are getting themselves into a position where one must back

*(Continued on Page Four)*

### On the Need for More Testing

**"With further testing it would be possible to improve the weight-to-weight ratios of warheads for such missiles as the Polaris and the Minuteman. That is their explosive power, now well below the equivalent of a megaton of TNT, might be greatly increased without increasing the warhead weight, thus making the missiles into truly strategic weapons."**

*—John W. Finney in New York Times, June 18*

**"The Polaris warhead carries destruction equivalent to that of forty Hiroshima bombs [800,000 tons TNT]. The Polaris weapons system is designed to hold hostage the hundred largest cities of the Soviet Union. . . . Only a few Soviet cities (Moscow and Leningrad, for example) would 'require' more than a single Polaris."**

*—Ralph E. Lapp, letter in New York Times, June 21*

**Senator ANDERSON: I wonder if either or both of you [Admiral Rickover was also present] would comment on this question of testing. How important is future testing in achieving an improved warhead for Polaris—(Remainder of question classified).**

**Admiral (W. F.) RABORN [Director, Special Projects, Bureau of Naval Weapons, Navy Dept.]. I would be glad to talk on that. We have conducted innumerable studies as to the necessity for large yield warheads and invariably all studies that we have done, and all that I have seen in other services show the accuracy of delivery means more than increases in the yield of the warhead. The accuracy of both the land base missile and what we have demonstrated in this system are just short of phenomenal. They are a lot better than we dared hope for. (A classified portion of statement follows.)**

**So while we certainly would never be in a position of saying we could not, would not, welcome reduced weight for equivalent yield or improved yield which can come about in increased testing, we are certainly not in the position at the moment of saying we are in dire need of such a thing.**

**Senator ANDERSON. You don't really need it.**

**Admiral RABORN. We are not in dire need.**

**Senator ANDERSON. (This portion of the question is classified). I am only interested in finding out because apparently something might come out of Geneva this summer [of 1960, when a test agreement seemed near—IFS]. I was hoping for a little guidance as to how disturbed the Congress should be or how complacent it might be with what we now have. You are not hurting for it?**

**Admiral RABORN. I think I represent the Navy. (Remainder of statement classified).**

*—Naval Reactor Program and Polaris Missile System. Hearing before the Joint Committee on Atomic Energy held in executive session 400 feet below the surface of the Atlantic on the USS Nautilus, April 9, 1960, and recently released in censored form. This is the hearing which provided the flurry of stories about the $2.98 toy Polaris model but this part of the testimony drew little attention.*



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# Semi-Philosophical Reflections on the Supreme Court's Closing Day . . .

If a poll taker were to ask almost any sampling of Americans whether they believed that an atheist should be allowed to hold public office in this country, he would probably find very few who thought so. Yet the Supreme Court of the United States ruled on its final day of the closing term last Monday that neither the States nor the Federal government could require affirmation of belief in God as a requirement for public office. The Court did so, furthermore, by unanimous vote. Mr. Justice Black wrote the decision and even Justices Frankfurter and Harlan concurred in the result. This unanimity indicates the gap between the thinking on the Court and the thinking in the country. The concepts applied by the Judges were those of the Eighteenth Century gentlemen who founded our country; they were disposed to look upon religion as at best a private affair and at worst a troublesome superstition which had brought much bloodshed into the world. Our generation, on the contrary, has been brought up to hear of *"atheistic"* and *"Godless* communism"; religion—along with freedom—is one of those goods for which we are prepared, with admirable altruism, to destroy the world. Yet the State of Maryland will obey the Court and now issue a Commission as Notary Public to Roy R. Torcaso without requiring him to swear belief in God and the country will acquiesce in the decision.

### A Secular Priesthood

This illustrates the extent to which the Supreme Court operates as a secular priesthood, commanding awe, respect, obedience and veneration, through the manipulation of its own hallowed symbols and dogmas. The law, like religion, is only another variety of the means by which some semblance of order and civilization is maintained in our rather primitive and sanguinary species. Instead of God, it utilizes a less anthropomorphic abstraction, Law with a capital L. The mob is subdued, a certain amount of fairness enforced, and conceptions kept alive which few really understand but which are nonetheless essential for some approximation to a good society. One of these is separation of Church and State. But this acquiescence has its limits. Maryland, so long as nothing more is involved than a freak dissenter, will obey easily, salving the hurt to its piety by continuing to enjoy its multitude of slot machines, its usurious loan rates, and its gold brick savings and loan institutions. But where more fundamental interests are involved, the Court is less willing to risk judgment.

The Catholic Church will forgive a little eccentric atheism on the periphery of our society but birth control is not only a cherished dogma but the embodiment of its hope ultimately to create a Catholic majority in the United States. Confronted with a test of the Connecticut birth control law, the court not only split but fragmented; all its usual divisions of liberal and conservative collapsed before this issue. No majority opinion could even be arrived at. The judgment of the court, declining to pass on the issue, was by Frankfurter, with Warren, Clark and Whittaker. Brennan concurred in the result but not in the reasoning, while Black, Douglas, Stewart and Harlan all dissented in different ways. In this case Black was the most circumspect and Harlan the most outspoken dissenter. The latter wrote a brilliant opinion expounding the place of the declaratory judgment in our constitutional law and going on to express his belief (see box at the bottom of page two) that the Connecticut Act was unconstitutional. The effect of the decision is to leave in force that system of hypocrisy by which the well-to-do and educated are allowed contraceptives while the poor are denied the benefits of the public birth control clinics which could teach them how to plan parenthood.

The idea of fair trial even at the expense of letting the guilty escape is at least as old as the Pentateuch but most men have yet fully to absorb it. In several notable decisions last Monday the Court took steps to provide greater protection against arbitrary police practices. In the Mapp case 5-to-4, Clark joined the liberals to reverse the 1949 Wolf case and rule that henceforth in state courts, as hitherto in Federal, illegally seized evidence could not be used in criminal trials. In a unanimous decision by Mr. Justice Brennan, the Court also ruled that general warrants could not be used in raids for obscene literature; the decision retold the fascinating story of the long struggle against the general warrant and its earlier use in England as a means of suppressing a free press. In another decision, 6-to-3, with Harlan, Clark and Whittaker dissenting, the Court reversed a

### Secularism Upheld

**"We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess belief or disbelief in any religion.' Neither can constitutionally pass laws nor impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs."**

*—Mr. Justice Black for a unanimous Court in the case of the Maryland Notary Public who refused to declare his belief in God.*

### From Harlan's Birth Control Dissent: Conn. Law More Extreme Than Franco Spain's

**"The secular state is not an examiner of consciences; it must operate in the realm of behavior, of overt actions, . . . what is involved here is this: the State is asserting the right to enforce its moral judgment by intruding upon the most intimate details of the marital relation with the full power of the criminal law . . . to enquire into, prove and punish married people for the private use of their marital intimacy. . . .**

**"Though the State has argued the constitutional permissibility of the moral judgment underlying this statute, neither its brief, nor its argument, nor anything in any of the opinions of its highest court in these or other cases even remotely suggests a justification for the obnoxiously intrusive means it has chosen to effectuate that policy. . . . Indeed a diligent search has revealed that no nation, including several who quite evidently share Connecticut's moral policy, has seen fit to effectuate that policy by the means presented here. . . ."**

*—Mr. Justice Harlan dissenting from the Court's refusal to pass on the Connecticut law which makes the use rather than the sale or purchase of contraceptives illegal. In a footnote he points out that even the anti-contraceptive laws of Catholic Belgium, France, Ireland, Italy and Spain do not go that far.*

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# ... It Gives the Worst Criminals A Better Break Than Accused "Security Risks"

murder conviction because the weak-minded suspect had been coerced into confessing by prolonged detention without arraignment or legal aid. This, the Culombe case, will infuriate the leading spokesmen on this subject in Congress, most of them Southerners and former prosecutors. The House has just passed a bill to get around the Mallory rule requiring prompt arraignment, and a similar bill has been introduced in the Senate. Here the Court majority stands up against the Congressional majority and manages to protect fair trial against the more vengeful spirit on Capitol Hill.

## Worse Off Than Criminals

But this consecration to the cause of justice even for the most abhorrent criminal begins to falter when the Court is confronted by cases which involve no allegations of crime but the hobgoblin area of "security." The same Court which could take so dispassionate and compassionate a view of murderers, narcotic sellers and purveyors of obscene literature swung 5-to-4 against Rachel Brawner, victim of the security mania, a short order cook employed in a private restaurant on the premises of the Naval Gun Factory here in Washington. The Admiral in charge got around all safeguards in such cases by the simple expedient of taking away from Mrs. Brawner the identification badge without which she could not get on to the premises. Her union, the Cafeteria and Restaurant Workers, tried in vain to get a hearing for her and finally brought this suit; the AFL-CIO filed a brief amicus pointing out that "perhaps several hundred thousand" civilians in similar jobs would be affected if military commanders were allowed arbitrarily to refuse access badges on security grounds. The situation may be found eloquently portrayed by Mr. Justice Brennan in the box below. But Mr. Justice Stewart for the majority allowed the naval commander to do as he pleased at the expense of this poor woman's reputation and livelihood. The suspected "security risk" here, like the suspected "counter revolutionary" in Soviet society, finds it much harder to get justice than the worst criminal.

In two other cases last Monday the Court showed its capacity to work itself up into a fine judicial lather over appeals which hardly deserved a hearing. One case was brought by a Wisconsin lawyer who objected to paying $15 a year to the State bar association on the ground that it espoused legal views of which he did not approve. The other case was by six railway clerks in Bibbs County, Georgia, bankrolled by some anti-union organization, to challenge the union shop agreement with the Southern Railway on the ground that their monthly dues of from $2.25 to $3 a month were used to support "ideological and political doctrines and candidates" of which they disapproved. The good ladies of Bibbs County, Georgia, also disliked the railway union paper, "Labor," probably the best labor paper in the country. The upshot of the railway suit is that the Georgia courts must now determine how much of the dues went for other than strictly collective bargaining purposes—an accounting nightmare—and order a rebate. We thought Justice Frankfurter's dissent with Harlan made more sense than the majority, and that the free speech issue was dragged in by the heels. The Frankfurter dissent surveyed the history of trade unionism and the political activities with which it is inextricably entangled here and abroad. This case will haunt the labor movement for some time to come, and give a handle to all kinds of anti-union elements.

### Five Contempt Cases To Be Heard

**The most welcome news on the last day of Court was the grant of a review to four more victims of the witch hunt: Alden Whitman, Wm. A. Price, Herman Liveright and Norton Anthony Russell. The first three pleaded the First Amendment in the Internal Security Committee's 1956 foray into newspaper business. Russell pleaded the First when asked by House Un-American about undergraduate activities at Antioch. Set down for argument with these cases is that of John T. Gojack, another First Amendment case of unusual interest. The majority in the Barenblatt decision implied that they would not allow the House Committee to operate as a pillory for the sake of exposure alone. Gojack, an official of the United Electrical Workers, was summoned in hearings called in Fort Wayne, Ind., in 1955 on the eve of union elections and designed (as Walter then said) "to give known or suspected commies . . . a full glare of publicity."**

## Branding A Naval Gun Factory Cook A Security Risk Without Hearing of Any Kind

**"If petitioner Brawner's badge had been lifted on grounds of her race, religion or political opinions, the Court would concede that some constitutionally protected interest . . . had been injured. But, as the Court says, there has been no open discrimination here. The expressed ground of exclusion was the obscuring formulation that petitioner failed to meet the 'security requirements' of the naval installation where she worked. I assume for present purposes that separation as a 'security risk,' if the charge is properly established, is not unconstitutional. But the Court goes beyond that. It holds that the mere assertion by government that exclusion is for a valid reason forecloses further inquiry. That is, unless the government official is foolish enough to admit what he's doing—and few will be so foolish after today's decision—he may employ 'security requirements' as a blind behind which to dismiss at will for the most discriminatory of causes.**

**"What sort of right is it which enjoys absolutely no procedural protection? . . . under today's holding petitioner is entitled to no process at all. She is not told what she did wrong; she is not given a chance to defend herself. She may be the victim of the basest calumny. . . . Petitioner was not simply excluded from the base summarily, without a notice and chance to defend herself. She was excluded as a 'security risk,' that designation most odious in our times. The Court consoles itself with the speculation that she may have been merely garrulous, or careless with her identification badge, and indeed she might, although she will never find out. But in the common understanding of the public with whom petitioner must hereafter live and work the term 'security risk' carries a much more sinister meaning. It is far more likely to be taken as an accusation of communism or disloyalty . . . the Government . . . ought not to affix a 'badge of infamy,' to a person without some statement of charges and some opportunity to speak in reply."**

*—Mr. Justice Brennan dissenting (with Warren, Black and Douglas) from Justice Stewart's 5-4 decision upholding the exclusion of a cook from the Naval Gun Factory in Washington on unspecified security grounds.*



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# Brotherly Milleniums Reachable Only By Brotherly Blood-Baths

*(Continued from Page One)*

down or slink away and lose face unless he calls the other's bluff. The stake is suffering beyond imagination for millions. This is more or less realized, but the realization makes little difference just as it turns out to make little difference that for many months the leaders on both sides have been saying that war is now impossible. Suddenly it is quite possible. The two leaders have met. They have made clear to each other that they are prepared to go to war unless the other backs down. Worse than war by miscalculation is war by cold calculation. We are prepared to call the other side's bluff and blow everybody's brains out, our own included, rather than give in.

### Everybody's Motives Are The Very Best

Another odd feature of the human landscape in this climactic year is that both sides claim to be moved by the purest impulses of human brotherhood. On our side are the Christians or the Judaeo-Christians, who believe—or think they believe—in human brotherhood. On the other side are the heirs of Marx, who founded another creed of brotherhood. Both creeds are brotherhoods of the oppressed, dedicated to building a better world for all mankind, in the here and/or the hereafter. Among allies on both sides are subsidiary creeds like Mohammedanism, which also postulate human brotherhood, not to mention the Nineteenth century creed of free markets and free enterprise as the only true road to the greatest good of the greatest number. Everybody is intent on building a better world in which all men will be brothers but no one is really willing to start out by being fraternal in the world as it is. The unspoken corollary of all these brotherly creeds is that the millenium can only be ushered in by a vast brotherly blood bath. So on both sides men are devotedly ready, if ordered, to press the button.

Which of the contending creeds is the true one? Solomon found the true mother by watching which woman preferred to give up the baby rather than have it cut in half. Here both contenders prefer the death of the world to its loss to the other. Clearly both are false and neither deserves the love of mankind. On one side is a caricature of socialism, on the other a caricature of freedom. How free are men who can be blown off the map at any moment without their permission?

Some crisis was bound to arise. For many months men have talked of co-existence. But the leadership on both sides has envisaged co-existence as a deplorable and distasteful necessity, arising from a technological misfortune: it was no longer possible to destroy others without destroying ourselves. It naturally flowed from this that co-existence was not really to be peace, a lying down of the lion with the lamb, but only a new form of struggle, more insidious, more protracted, leading by safer means to the extinction of the other. No one said, we must learn to live together, we must stress our similarities not our differences, we must think of ourselves as one species on a small planet, as indeed sometimes we notice that we are. *They* spoke of co-existence as only a new and more intensified form of class struggle while we saw in it only a way by other means to spread our own system. No one saw it as a breathing spell, in the shadow of monsters neither side wished to unleash, a breathing spell in which to learn that we are all parts of one another.

Should the war come, those who survive will be a long, long time rebuilding. They may be helped to build something better if somehow the memory can be preserved of how poorly the world was organized and the species conditioned. Should the crisis pass, it is by a study of this landscape that we may possibly find our way out of peril to something more stable. The sovereign state is our enemy. Only if it dies can humanity live. *Noon, June 21*

### Albert Deutsch

**We record with sorrow the sudden death in London June 17 of Albert Deutsch, our newspaper colleague of many years on PM, the New York Star, the New York Post and the New York Daily Compass. His pioneer work in the field of the mentally ill earned him a reputation in psychiatry. His sympathy for the unfortunate and his courage in speaking up on their behalf made him a beloved newspaper columnist and a cherished friend.**

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